STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SADDLEBACK COMMUNITY COLLEGE DISTRICT FACULTY ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. LA-CE-1904
v.	)	PERB Decision No. 433
SADDLEBACK COMMUNITY COLLEGE DISTRICT,	)	November 16, 1984
Respondent.	)	

Appearances: A. Eugene Huguenin, Jr., Attorney for Saddleback Community College District Faculty Association, CTA/NEA; Biddle & Hamilton by Richard L. Hamilton, Attorney, for Saddleback Community College District.

Before Hesse, Chairperson; Jaeger and Burt, Members.

DECISION

JAEGER, Member: The Saddleback Community College District Faculty Association (SFA) appeals the dismissal of that portion of its unfair practice charge alleging that the Saddleback Community College District unilaterally changed an established policy permitting faculty members to schedule classes on fewer than five days per week.

DISCUSSION

The issue presented to this Board in cases involving an appeal from a dismissal of a charge and concurrent refusal to issue a complaint is whether the charge states facts which, if true, establish a prima facie case of some violation of

law.[1] A charge will be dismissed where the facts are insufficient to support the alleged violation, or fail to point to any statutory breach. But, it is not the function of the Board agent investigating the charge to judge the merits of the charging party's dispute. It follows that the agent is not entitled to resolve disputed facts. These are to be resolved in other proceedings following issuance of a complaint.

Here, the charge alleges that an established practice that permitted teachers to schedule their classes on fewer than five days per week was unilaterally altered by the District. The investigating regional attorney reviewed the parties' 1981-83 agreement, including a side letter executed on or about October 1, 1981, and concluded that the teachers' total number of required working hours was not affected by the District's action, and that despite the previous permissive practice, the District had a contractual right to set class schedules. In support of his conclusions, the regional attorney cited Marysville Joint Unified School District (5/27/83) PERB Decision No. 314.

SFA argues that there is no provision in the 1981-83 agreement or the side letter that gives the District the right to schedule classes. Therefore, SFA argues, the discretionary

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[1]In this case, the Educational Employment Relations Act, codified at Government Code section 3540 et. seq., and particularly sections 3543.5(a), (b) and (c) thereof.

policy that existed prior to 1983 constituted an established past practice which the District unlawfully altered. In support of its position, SFA offers its interpretation of the combined agreements.

It is not necessary to accept SFA's interpretation to reach the conclusion that the charge should not have been dismissed. Nor is it necessary to decide here whether the scheduling of classes is, in itself, a negotiable subject. Certainly "hours of employment" is negotiable. That term is not limited to the total number of working hours required of employees, as the regional attorney seems to imply. It includes what days of the week and what hours of the day are to be worked.

The facts alleged here demonstrate that the discretionary policy permitted classes to be scheduled so that teachers "did not have to be on campus five days a week." In 1983, during negotiations, the District issued a requirement that teachers schedule classes on all five days. Thus, it is clear that a unilateral change of a negotiable policy is the gravamen of the charge.

The regional attorney misreads Marysville. First, the facts in that case do not reveal, as he believes, that the past practice was "contrary" to the parties[1] contract. The longer lunch period instituted by the Marysville District was permitted by the contract which provided only that lunch periods should not be less than 30 minutes. Second, the

Marysville contract in dispute specifically mentioned lunch periods and specifically set forth the minimum time allowance indicated.

Here, we find no specific contract reference to the days and hours when classes are to be scheduled. The regional attorney extrapolated a contrary conclusion from what he described as an "elaborate scheme regarding working hours, class size and maximum workload."

The District points to no clear contract authorization for its change in the discretionary policy. Much like the regional attorney, the District surveys the contract provisions and arrives at its interpretation of the contract to justify its action. By its own words, it "sums up" the various provisions cited and asserts that the "above analysis essentially disposes of the Association's alternative contentions regarding ambiguity." (Emphasis supplied.)

PERB's ultimate interpretation of the Marysville contract followed issuance of a complaint, a full-scale evidentiary hearing below, and consideration of exceptions and arguments on appeal. Although we do not suggest that a hearing will always be required where the dispute involves an existing contract, Marysville also informs us that where there is a legitimate dispute over the meaning of that contract, the parties must be afforded the opportunity to offer evidence in support of their respective contentions. We cannot find in the contract

provisions comprising that "elaborate scheme" so clear and unambiguous a meaning as to justify excepting this case from the foregoing rule.

In summary, the Board concludes that the charge states facts which, if true, tend to support the claim that the District unilaterally and unlawfully changed a negotiable policy.[2]

ORDER

Based on the record, the Public Employment Relations Board ORDERS that the dismissal of that portion of the unfair practice charge filed by the Saddleback Community College District Faculty Association, CTA/NEA against the Saddleback Community College District alleging that the District unilaterally and unlawfully altered an existing policy permitting teachers to schedule classes on fewer than five-days per week is REVERSED and further ORDERS that the matter be remanded to the General Counsel for issuance of a complaint and appropriate further proceedings.

Chairperson Hesse and Member Burt joined in this Decision.

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[2]See San Juan Unified School District (3/31/82) PERB Decision No. 204.